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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BEFORE THE HONORABLE ROBERT H. PERRY, DISTRICT JUDGE

-oOo-

ETREPPID TECHNOLOGIES, L.L.C., a  
Nevada Limited Liability Company,

Plaintiff,

vs.

Case No. CV06-00114

Dept. No. 9

DENNIS MONTGOMERY, an individual;  
THE MONTGOMERY FAMILY TRUST;  
DENNIS MONTGOMERY and BRENDA  
MONTGOMERY, as trustees for THE  
MONTGOMERY FAMILY TRUST, and  
DOES 1 through 20,

Defendants.

/

S E A L E D

VOLUME II of II  
TRANSCRIPT OF PROCEEDINGS  
HEARING - PRELIMINARY INJUNCTION

Tuesday, February 7, 2006

RENO, NEVADA

Reported By: CECILIA VOHL, NV CCR #246, RPR, CRR, CCP

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Page 2

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1 RENO, NEVADA, TUESDAY, FEBRUARY 7, 2006, 3:25 P.M.

2 -oOo-

3 THE COURT: Please be seated. Go ahead.

## 4 DIRECT EXAMINATION (CONTINUED)

5 BY MR. JAKOPIN:

6 Q. Thank you. Mr. Trepp, could you talk a little bit

7 about, from the formation of the business in 1998, activities

8 that the company did to sort of grow the business.

9 A. As I said before, we basically started out as an R&amp;D

10 development company. It took us, I'd say, at least a year and

11 a half to two years of developing before we could actually get

12 into a quasi-commercial mode where we could actually start

13 giving demonstrations or putting together a PowerPoint or

14 something of that ilk, but we started showing commercial

15 customers the type of business that we potentially were trying

16 to sell.

17 The first contract that we were able to secure after

18 an awful long time of negotiations was with General Electric

19 Company, and that was for a surveillance system which we built.

20 They were interested in it and asked us to do dramatic changes

21 or upgrades to the system that we originally built, which they

2 (Pages 2 to 5)

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1 eventually licensed from us to use in their Interlogic company,  
2 which was their surveillance company.

3 Q. Other than GE, were there other companies to whom  
4 presentations were made?

5 A. Absolutely. Quite a few. Intel was one, which we had  
6 gone over all of the different -- or some of the different  
7 potential applications that we could offer to them for their  
8 use. Kodak was another. There was a company based out of  
9 Los Angeles, Crest International, which was a company which  
10 related to Hollywood post-production business, and others.

11 Q. Were there meetings that you had with people from each  
12 of the companies that you mentioned?

13 A. Absolutely.

14 Q. And were both you and Mr. Montgomery involved in those  
15 meetings?

16 A. Absolutely.

17 Q. During those meetings, did you give any of the  
18 prototypes that you had talked about before to show these  
19 companies what you could do?

20 A. We would -- Dennis never wanted to leave any of what  
21 we were doing with any of the companies. But what we would do  
22 is, we would agree in advance to create a test protocol where  
23 we could agree to show exactly what we were trying to  
24 demonstrate to use as a tool to eventually sell the product to

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1 whatever that company might have been.

2 Q. And at that meeting, were test protocols shown?

3 A. I beg your pardon?

4 Q. At those meetings, were those test protocols shown?

5 A. Yes. And then we would leave literature, a PowerPoint  
6 or something, relating to whatever their specific desire would  
7 be.

8 Q. So, then from the GE deal that the company had, how  
9 did the company sort of progress from there?

10 A. During the GE process, we -- I had a relationship with  
11 the management at MGM in Las Vegas, and we asked if we could  
12 use the surveillance rooms in the MGM. Having about 5,000  
13 cameras, obviously, it would be a good demonstration place.

14 We put in -- I don't know the number of computers, but  
15 it was a large number of computers to do video capture. And at  
16 the same time, we tested and demonstrated to other entities our  
17 ability to do pattern recognition while at the MGM.

18 Q. Which entities are you referring to?

19 A. DOD people; also people from Compaq.

20 Q. Did there come a time when your relationship with the  
21 DOD people went to another level?

22 A. Yes. We had done a number of different  
23 demonstrations. The Air Force particularly was extremely  
24 interested in doing work relating to our ability to capture and

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1 deliver video transmissions from predator or unmanned vehicle  
2 aircrafts down to wherever they needed to get to.

3 Q. Did you have -- from that interest to that -- did that  
4 go anywhere?

5 A. Yes, we were able to show the DOD, as well, a number  
6 of demonstrations that would relate to our ability to do  
7 pattern detection or ATR, automatic tracking and recognition.

8 Q. And "DOD" in your last few answers, you meant  
9 Department of Defense?

10 MR. FLYNN: Your Honor, could we have some timelines?  
11 I think it would be a little helpful.

12 THE COURT: Yes, it would be a little helpful if you  
13 put this in context.

14 BY MR. JAKOPIN:

15 Q. The GE contract, do you remember when that was,  
16 Mr. Trepp?

17 A. I don't remember exactly, but we clearly did a number  
18 of demonstrations for a number of the other companies which I  
19 mentioned to -- prior to getting the GE contract. The GE  
20 contract was at least a year in the making, so I would say we  
21 were in -- I would say we started doing demonstrations in 2000  
22 for sure. I believe we did a demonstration for Intel either at  
23 the end of 2000 or the beginning of 2001 and worked with Intel  
24 for, I would say, at least a year.

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1 Q. How about the demonstrations at the MGM you were  
2 referring to?

3 A. That would have been in the -- I believe, again, the  
4 end of 2000-2001 time frame.

5 Q. Okay. And so the heightened interest by the  
6 Air Force, was that, then, shortly thereafter?

7 A. Yeah, that would have been in, I would say, end of  
8 2001-2002 ilk.

9 Q. Did there come a time that you entered into a contract  
10 with the Air Force?

11 A. Yes.

12 Q. When was that?

13 A. I don't remember exactly, but I believe it was the end  
14 of 2002.

15 Q. And was that contract for a certain duration?

16 A. Yes. The contract we had with them was on what I  
17 would call an interim basis. It was -- I don't remember if it  
18 was six months or nine months. And at that point, the  
19 Air Force had asked us to work with another governmental agency  
20 where that agency basically picked up that contract and went  
21 forward with it for approximately another year to 15 months.

22 Q. What was the contract for?

23 MR. LOGAR: Which one, Counsel? Air Force?

24 THE COURT: Yeah.

3 (Pages 6 to 9)

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1 MR. JAKOPIN: The contract with the Air Force.

2 THE WITNESS: This is going to get into what -- there  
3 will be a debate as to what's classified and to what's not.

4 THE COURT: Well, here's my concern, is that  
5 everything that's been submitted to me in terms of authority --  
6 and my clerk and I did some research on this issue too -- talks  
7 about the government being the party that objects to things  
8 that are classified and not the persons that are involved.

9 And so, unless somebody can convince me otherwise, if  
10 there's a question asked, and unless there's some statute or  
11 some other procedure that precludes me from allowing that, I'm  
12 going to direct the witness to answer the question.

13 MR. FLYNN: The statute does involve agents, Your  
14 Honor. Mr. Montgomery is, without question, as his examination  
15 will show, an agent of the U.S. federal government. I doubt  
16 Mr. Trepp is.

17 Whether eTrepid Technologies is under the contracts  
18 that signed with this other department of the government,  
19 whether eTrepid Technologies is an agent, frankly, I have  
20 nothing to offer, because these contracts are taken by the  
21 agency and they're not given to the individual.

22 But the contract -- in this instance particularly,  
23 Mr. Montgomery has the highest security clearance you can get.  
24 He is under that contract, undoubtedly an agent, and

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1 Mr. Montgomery has spoken to an individual within the  
2 government who --

3 MR. LOGAR: Wait. Somebody walked in.  
4 (Whereupon, a man is instructed to leave the  
5 courtroom.)

6 THE COURT: Go ahead -- as soon as this gentleman  
7 leaves, go ahead and finish what you were going to say, but I  
8 have a question. Maybe I'll just ask it now, if you don't  
9 mind.

10 MR. FLYNN: Go ahead, Your Honor.

11 THE COURT: Assume he's an agent, which is news -- I  
12 mean, I don't know about that. But assume that he is. Then I  
13 need to see the statute or the order or the rule that says, as  
14 such an agent, that issues like this cannot be discussed in  
15 this courtroom. I haven't seen that.

16 MR. FLYNN: I believe we gave you the Cheney case. We  
17 gave you various cases from the Supreme Court which clearly  
18 says he cannot.

19 THE WITNESS: Your Honor --

20 THE COURT: Well, these cases that I'm talking about  
21 here are cases where the government -- the petitioner  
22 government, the director of the Central Intelligence Agency,  
23 who was a party defendant -- the statute that you gave me,  
24 Title 18 U.S.C., the United States may request the Court to

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1 conduct a hearing to make determinations concerning the  
2 relevant use or admissibility of classified material. United  
3 States ain't here.

4 MR. FLYNN: You're right, Your Honor. And our ability  
5 to bring in the United States in the next 48 hours is limited.  
6 I will represent to the Court, because I was present with  
7 Mr. Montgomery when he had the conversation with a ranking  
8 United States government official who instructed him do not  
9 testify about any classified material or you will be in breach  
10 of the agreement and it's treasonous. That is the instruction  
11 he was given. Now, what they choose to do -- because they are,  
12 frankly, caught between Mr. Trepp and Mr. Montgomery. And what  
13 they choose to do is up to them.

14 THE COURT: Do they know this hearing is being held  
15 today?

16 MR. FLYNN: Yes, they know as of today.

17 THE COURT: Well, I mean, I'm assuming, being that it  
18 was such an emergency, they'd be here.

19 MR. PEEK: Your Honor, this action was filed 19 days  
20 ago, January 19th. As this Court knows, Mr. Montgomery was  
21 present with Judge Polaha. So they've known about this, and  
22 this was a matter of some urgency to them.

23 THE COURT: I mean, we can get real silly. My  
24 classmate and roommate at the Naval Academy is now the chairman

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1 of the Joint Chiefs of Staff, Peter Pace. I can call him on  
2 the phone. You want me to do that?

3 MR. FLYNN: Sure. And I will represent to the Court  
4 that I have contacted, prior to the TRO going in place, the  
5 former Secretary of Defense and others.

6 THE COURT: I'm not trying to be difficult about this,  
7 but I'm being placed in a very uncomfortable situation because  
8 I'm being asked to deal with an issue about which I have some  
9 sensitivity. You might infer from my background that I do. At  
10 the same time, we have a hearing here that's been scheduled for  
11 a substantial period of time and don't really see how, so far,  
12 that we've talked about anything that's necessary to this  
13 hearing in terms of whether or not this hearing can go forward  
14 or whether or not I can go ahead and make the decision I need  
15 to make.

16 I was about to say we haven't really gotten to the  
17 point, yet, either in terms of what this information is, and  
18 I'm hoping that we're going to get there pretty quick.

19 MR. FLYNN: Your Honor, let me say this. If Mr. Trepp  
20 wishes to violate his oath of secrecy on these matters, that's  
21 up to Mr. Trepp.

22 Mr. Montgomery, with all due respect -- and I think we  
23 can avoid it on his direct so we can get to the core issues --  
24 is going to assert the governmental privilege.

4 (Pages 10 to 13)

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1 Now, if it requires the government coming in within  
2 the next 48 hours to talk to the Court, we'll see what  
3 develops. I think at this level, what you're dealing with,  
4 Your Honor, you're not dealing on the level of Mr. Hennessey.  
5 You're dealing on a level that is so compartmentalized, as I  
6 understand it, that there are very few individuals --  
7 Mr. Hennessey wouldn't even know who to contact to determine

8 relevant issues on some of these issues. But if Mr. Trepp --

9 THE COURT: Wait a minute. Hold on. Sit down.

10 Sir, you need to sit down too. I can't hear when  
11 there's all this conversation.

12 Now, go ahead and finish what you were going to say,  
13 and then I'll let Mr. Peek speak.

14 MR. FLYNN: Fine, Your Honor. We want to go forward.  
15 If Mr. Trepp wants to violate his oath, that's up to him.  
16 Mr. Montgomery, hopefully, will be able to give the Court  
17 enough so that won't be necessary.

18 If the defense wants to then ask questions about it,  
19 if the governmental privilege has to be asserted, maybe we'll  
20 do a little voir dire. The way we do it, I suppose we'll -- it  
21 could be procedurally done in chambers.

22 THE COURT: Yeah, what I'm saying is, the contents of  
23 it don't need to be disclosed, as far as I'm concerned, to  
24 understand whether or not there should be an injunction with

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1 regard to it. And if you're concerned about the contents, I  
2 don't think I need to know about that.

3 But let's go ahead. I'm with you. We'll go ahead  
4 with this thing. We'll see when we get there if he's got a  
5 privilege to invoke.

6 MR. PEEK: Your Honor, so there's no misunderstanding  
7 with the Court and at least the plaintiff, this source code has  
8 no classification to it. It has no top secret classification  
9 to it. It certainly was used in conjunction with classified  
10 material that was provided to eTreppid to run the source code  
11 programs to identify objects, identify patterns, identify  
12 anomalies. But I want to at least make it clear to this Court  
13 that despite Mr. Flynn's continuous statements unsupported by  
14 affidavit, not even really presented in his opposition, not  
15 even part of any motion practice here, that this technology was  
16 started out as, this is technology that emanates from public  
17 filings that I had in the copyright office, to now something  
18 that has some super-secret aspect to it. It keeps evolving, it  
19 keeps morphing, it keeps changing every time we knock down the  
20 straw man that he puts up.

21 THE COURT: All right.

22 MR. FLYNN: So I want to go, too, but I want to at  
23 least correct the record that there is no -- nothing behind  
24 this. This is our source code.

Page 16

1 THE COURT: I understand that's your position. I  
2 just -- when you hear two things from people that have  
3 information, I don't know exactly how to balance it out until I  
4 hear it all.

5 MR. PEEK: I think you should hear it based upon sworn  
6 declarations as opposed to anecdotal comments from counsel.

7 THE COURT: I understand.

8 MR. PEEK: And we have testimony. We have only  
9 anecdotal remarks.

10 THE COURT: I understand.

11 MR. FLYNN: Your Honor, the evidence will be that it's  
12 above the highest security clearance called SAP. Not only is  
13 it classified beyond -- it's the highest classification  
14 existing in the United States, "the source code."

15 THE COURT: All right. Well, we'll see. Let's go  
16 ahead. We'll try to get through the process of figuring out  
17 what it is and where it came from and where it is now.

18 BY MR. JAKOPIN:

19 Q. Strike the question. I'll try to start again.

20 The contract that we've been talking about, was that  
21 contract with eTreppid or was with Dennis Montgomery?

22 A. With eTreppid.

23 Q. Who was the contract for?

24 A. I don't understand what you mean.

Page 17

1 Q. What were the services that eTreppid was providing  
2 under the contract?

3 A. To process video information and give outputs.

4 Q. And did eTreppid fulfill that contract?

5 A. Yes.

6 Q. And it was fulfilled when?

7 A. I believe the Air Force contract was for six or nine  
8 months, and then it was given off to a different governmental  
9 agency.

10 Q. And did it expire with respect to this different  
11 governmental agency at any point in time?

12 A. Yes, about a year and a half ago.

13 Q. Were there any other governmental contracts that  
14 eTreppid has entered into as well?

15 A. Yes, there was another contract we got with Socom to  
16 do testing for an ATR project.

17 Q. And when that was?

18 A. I believe it was about a year ago.

19 Q. Does that contract continue today?

20 A. It's either expired or it's about to expire.

21 Q. Other than that contract, any others?

22 A. Yes, there was one other project called -- another  
23 Air Force project called Eagle Vision, which started about six  
24 months ago and should end -- well, we had to put the contract

5 (Pages 14 to 17)



Page 18

1 on hold because, since we don't have the source code, we can't  
2 do the work. So the contract, by definition, and our revenue  
3 stream, by definition, is on hold until we can get it back.  
4 But in theory, we were supposed to have another -- about seven  
5 or eight months left on that contract.

6 Q. You refer to the source code being gone. When did you  
7 first find out about the source code being removed at the  
8 company?

9 A. It would either have been on Sunday, January 6th --  
10 no, excuse me. That would be Sunday, January 8th, or Monday,  
11 January 9th.

12 Q. How did you learn about it?

13 A. Sunday, I got a call from Jesse, one of our employees,  
14 saying that he wanted to get together with me and discuss  
15 something with me.

16 Q. And what happened next?

17 A. I got together with him that afternoon, and he  
18 explained to me that there were -- either he knew specifically  
19 or he knew other people that said over the last couple of weeks  
20 Dennis had either taken their hard drives or they had noticed  
21 something missing from their workstations.

22 MR. FLYNN: Objection. Move to strike. Hearsay, Your  
23 Honor.

24 THE COURT: I'm going to permit it. I'm going to

Page 19

1 listen to hearsay to a fairly large extent during this hearing  
2 under the general exception to the hearsay rule.

3 BY MR. JAKOPIN:

4 Q. Mr. Trepp, before we continue with the source code, a  
5 couple questions about the government contracts. Were those  
6 government contracts fulfilled using a proprietary eTreppid  
7 source code?

8 A. Yes.

9 Q. And how did you fulfill them? Did you provide results  
10 to the government?

11 A. Yes, in every case. Or, in one of the contracts, we  
12 actually gave them -- I don't know the number -- a number of  
13 laptops that had our executable source code on them so that the  
14 Socom people could actually operate them on their own.

15 Q. Thank you. Getting back again to the removal of the  
16 source code, you talked about having an afternoon meeting with  
17 Jesse. What did you do next?

18 A. I called Sloan that night at home and said what was he  
19 -- was he aware of anything that was going on. And he either  
20 alluded to the fact that while he was on his vacation, that he  
21 wasn't sure, but he either thought a substantial or all of the  
22 source code was gone. I told him it was imperative he came in  
23 early the next morning to give me an update as to what was  
24 going on relative to that.

Page 20

1 Q. Did he do that?

2 A. Yes.

3 Q. What did you do then?

4 A. I asked if he could give me a better assessment as to  
5 what was going on, and I immediately went to find Dennis.

6 Q. Did you?

7 A. Yes.

8 Q. With respect -- when you found out what was going on,  
9 what did you find out?

10 A. I basically said to Dennis, "There's obviously  
11 something awry here. What's going on?"

12 Q. What did he say?

13 A. He said, "I don't know what you're talking about." I  
14 then had to go back upstairs to my office. I had planned a  
15 four-month vacation around the world with my family. I was  
16 supposed to have left that day. And obviously, with a problem  
17 brewing, I obviously figured out I shouldn't be leaving and  
18 figure out exactly what was going on. So I did, in fact, go to  
19 the airport to see off the people that we were supposed to be  
20 traveling on this trip with.

21 When I came back in, I got a great deal more  
22 information from the employees basically stating that the vast  
23 majority of all of the workstations were deleted -- all of the  
24 source code was deleted, the ISA server was deleted and maimed,

Page 21

1 and I was perplexed, to say the least.

2 Q. Did you direct the employees to do anything in finding  
3 that out?

4 A. To find out exactly, to the best of their knowledge,  
5 exactly what happened. And I asked them all so that we could  
6 get together to cumulatively to come up with exactly where  
7 everything stood. I asked Sloan to call Dennis and ask him to  
8 come back into the office so that I could discuss with him  
9 again what was going on. And he said that he would come back  
10 in, but he didn't.

11 Q. Okay. That was on Monday, correct?

12 A. That is correct.

13 Q. Anything else happen on Monday with Mr. Montgomery?

14 A. Not that I can recall.

15 Q. How about on Tuesday?

16 A. Tuesday, I again put a call in to him, told him we had  
17 to get together. I met -- I don't remember if I met him  
18 upstairs or downstairs initially, and said, "What on earth are  
19 you doing? The people can't work. We've got 20 employees. If  
20 we don't have the source code, how can you have people work?  
21 What did you do with it?"

22 And he said, "I don't know what you're talking about."

23 And I said, "Well, what about all of the workstations  
24 and the source server and the ISA server, why did you delete

6 (Pages 18 to 21)

Page 22

1 all of those?"

2 And he said, "Well, I didn't do it."

3 So I said, "Who on earth did?"

4 And he said to me, "Well, Patty did it."

5 Now, it was preposterous, that statement, because I  
6 had found out from Sloan that morning that the only two people  
7 that had access to be able to access either the source server,  
8 the ISA server, or all of the individual workstations, were  
9 Mr. Montgomery and Sloan.

10 I said, "Please let me help you get through this. I  
11 don't understand what you're doing."

12 And he just screamed and yelled and ranted and raved.  
13 Half of the employees in the building certainly heard him  
14 because he was in an absolute tirade. He went running out the  
15 back, jumped into his truck. And once again, I appealed to let  
16 me help you, and it went to no avail. He just drove away.

17 Q. There was reference earlier to backup disks. Are you  
18 familiar with those?

19 A. Yes.

20 Q. Could you tell us about those.

21 A. Dennis had told Sloan to back up everything in the  
22 building, with the exception of the source server stuff. I had  
23 also said to Dennis from Day One, when we started the business,  
24 that it was essential for what would be in my family's best

Page 23

1 interest and his family's best interest for me to personally  
2 keep a copy on a regular basis of the source code. I asked him  
3 to do that at a minimum of annually, and certainly, anytime  
4 there was a major event that would have occurred, we would  
5 either have a new project or new project, that I would be able  
6 to keep a copy outside of the building, outside of the -- what  
7 was in control of eTreppid.

8 And I, over a seven-year period, kept getting -- they  
9 were first CDs, they became DVDs, and then they became hard  
10 drives. I kept all of those in safe-deposit boxes. And the  
11 only two people who had access to the safe-deposit boxes was my  
12 wife and myself.

13 Q. After the events that you've just talked about took  
14 place, did you get those retrieved?

15 A. Yes. I asked -- I didn't want to leave the building  
16 because there was obviously a great deal of turmoil, and people  
17 were worried about any number of things, obviously. I was  
18 trying to keep -- get some kind of stability, at least on an  
19 interim basis, until we could figure out what was going on. I  
20 asked my wife to go to the safe-deposit boxes, retrieve all of  
21 the disks and bring them back into the office.

22 Q. And she did that?

23 A. She did it.

24 Q. And what did you do with the disks then?

Page 24

1 A. I immediately brought them into Sloan's office. And  
2 Sloan -- I said to him, these are the disks that Dennis had  
3 given me over the years with all of the source codes for all of  
4 the projects that we'd been working on from the beginning of  
5 time, and that this will be the answer; please look on these,  
6 and tell me exactly what's on there, hoping that, obviously,  
7 all of the source code for all of the projects that we'd been  
8 working on over the years was there.

9 Q. Did he report back to you after he did that?

10 A. Yes. He just started to laugh. The first thing he  
11 said to me was, "How come there's so few of these? Dennis told  
12 me he used to give them to you every two weeks."

13 MR. FLYNN: Your Honor, I've got a continuing  
14 objection on hearsay.

15 THE COURT: All right. Objection is noted. It will  
16 be continued.

17 BY MR. JAKOPIN:

18 Q. Anything else?

19 A. I'm sorry, I didn't understand what -- I didn't know  
20 what just happened.

21 Q. He objected, and the judge allowed you to answer.

22 A. Okay. You better ask me the question again.

23 Q. Was there anything else that you were told about what  
24 was on those disks?

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1 A. Yes. Sloan then went through, disk by disk, and went  
2 through the whole thing and basically started to laugh and  
3 said, "There's nothing here." He did say there was some  
4 reference to one compression project, but that it was totally  
5 worthless by virtue of the fact that there wasn't source code  
6 there for it; it was just an EXE. He said the bulk of it --  
7 the rest of the junk on it was a bunch of imagery, just bitmap  
8 images of stuff.

9 Q. What has the effect of the loss of the source code  
10 been on the company?

11 A. Well, we have no ability to generate revenue. We've  
12 told the two governmental agencies that we have pending  
13 contracts with that we can't perform on them. We've asked for  
14 an extension, if that would be a possibility.

15 Obviously, by not having the contracts, we don't have  
16 revenue. I have to make a decision at some point in the near  
17 future, how many months I'm going to be able to sustain paying  
18 the 20 families who are employees. That's going to have to  
19 come out of my pocket at some point.

20 Q. How many employees are there?

21 A. Twenty.

22 Q. How many of those are engineering types?

23 A. Seventeen or eighteen.

24 Q. Does the company routinely have all of their employees

7 (Pages 22 to 25)

Page 26

1 sign agreements such that the work that they do is the  
 2 company's?  
 3 A. Absolutely.  
 4 Q. Is the company currently in the process of trying to  
 5 negotiate new contracts?  
 6 A. Absolutely.  
 7 Q. Was the office software to be --  
 8 A. We were -- up until this event, we were on the verge  
 9 of getting a very substantial contract -- or multiple  
 10 substantial contracts.  
 11 Q. Up until these recent events, has there ever been any  
 12 conversation that you've had with Mr. Montgomery to the  
 13 effect -- I mean -- strike that.  
 14 Have there been conversations you've had with  
 15 Mr. Montgomery from time to time relating to pattern  
 16 recognition?  
 17 A. Yeah, for many, many years.  
 18 Q. In any of those, did he say anything about his owning  
 19 it?  
 20 A. Owning what?  
 21 Q. Any of -- any software relating to pattern  
 22 recognition.  
 23 A. No, absolutely not.  
 24 MR. JAKOPIN: What's our next number?

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1 MR. FLYNN: I think we're dealing with 8 now. I think  
 2 it's 8.  
 3 (Plaintiff's Exhibit 8 was marked for identification.)  
 4 BY MR. JAKOPIN:  
 5 Q. Handing you a copy of a document that has been marked  
 6 as Exhibit 8, do you recognize this as a business record of the  
 7 company, Mr. Trepp?  
 8 A. Yes.  
 9 Q. And what is it?  
 10 A. It's an assignment of a U.S. patent.  
 11 Q. And on the following page, is a copy of that patent  
 12 attached?  
 13 A. Yes.  
 14 Q. Actually, a patent application.  
 15 A. Yes.  
 16 Q. Is this the patent application relating to an  
 17 invention that was made by Dennis Montgomery at the company?  
 18 A. Yes.  
 19 Q. And does this assignment reflect that he assigned this  
 20 patent to the company on this assignment dated March 7th, 2002?  
 21 A. Yes, it is.  
 22 MR. JAKOPIN: Thank you.  
 23 Can I get this offered into evidence?  
 24 THE COURT: Are you offering Exhibit 8?

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1 MR. JAKOPIN: Yes.  
 2 MR. FLYNN: May I have one moment, Your Honor?  
 3 THE COURT: Yes. Isn't this attached to one of the  
 4 pleadings?  
 5 MR. JAKOPIN: There were three patent applications  
 6 attached to the pleadings, Your Honor. We've actually got more  
 7 patent applications than the three that were attached to the  
 8 reply.  
 9 Frankly, if they would stipulate, I could get all of  
 10 these marked together and we could move this along more  
 11 quickly.  
 12 THE COURT: So the answer to my question is "no,"  
 13 right? My question was, isn't this --  
 14 MR. JAKOPIN: This particular one?  
 15 THE COURT: Yes.  
 16 MR. JAKOPIN: I'll find out.  
 17 I don't believe so, Your Honor.  
 18 THE COURT: All right. I just thought I'd seen it.  
 19 MR. FLYNN: Your Honor, we're going to object on  
 20 authentication grounds. Even though we think it's irrelevant,  
 21 the individual who allegedly witnessed it was fired five weeks  
 22 prior to March 7th. And there are other documents that have  
 23 been given to the Court where Mr. Montgomery's signature was  
 24 obviously forged.

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1 MR. PEEK: Your Honor, will they just say or do  
 2 anything?  
 3 THE COURT: Wait, wait, wait, wait.  
 4 MR. PEEK: You know --  
 5 THE COURT: Hold on, hold on, hold on.  
 6 Well, I haven't heard -- maybe I have, but it's been  
 7 lost in all of the conversation here. Has a foundational  
 8 question with regard to Exhibit 8 been asked of the witness?  
 9 MR. JAKOPIN: When I asked him if it was a business  
 10 record of the company, he said yes. He indicated that he was  
 11 aware that this was one of the inventions of Mr. Montgomery and  
 12 that this was the assignment that related to that invention.  
 13 THE COURT: And he's seen it before? And it's a true  
 14 and correct copy of what he's seen before; is that right?  
 15 MR. JAKOPIN: Whether he has seen this particular -- I  
 16 mean, what is --  
 17 MR. PEEK: Either he has or he hasn't.  
 18 THE WITNESS: I don't believe I ever have, Your Honor.  
 19 THE COURT: All right. And how does he determine that  
 20 it's a business record of the company, simply because of its  
 21 content?  
 22 MR. JAKOPIN: Correct, Your Honor. Further, the  
 23 published application is published by the U.S. Patent Office.  
 24 I mean, this is in a format that is published by the patent

8 (Pages 26 to 29)

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1 office. And so, that's a record of what has been filed from --  
2 with the patent office and published by them.

3 MR. FLYNN: Your Honor, in order to authenticate and  
4 admit into evidence in any courtroom that I know of in the  
5 United States, you need a certified copy from the patent  
6 office, number one; number two, in order to prove it's a  
7 business record, he's got to go through the four elements of  
8 business records.

9 He doesn't even know what it is, let alone being able  
10 to go through the four records -- four elements, let alone  
11 knowing what the four elements are, let alone knowing what the  
12 business routines of the company are with regard to  
13 recordkeeping. None of that has been established.

14 THE COURT: Well, there truly hasn't been any  
15 testimony about who the custodian is, whether it's kept in the  
16 ordinary course, things like that. Why don't you see if you  
17 can lay just a little bit more foundation. I want to give this  
18 a little bit of thought too.

19 My inclination is to -- Mr. Trepp, does that appear to  
20 be Mr. Montgomery's signature on the bottom?

21 THE WITNESS: Yes.

22 THE COURT: I'm going to admit it. It's admitted.  
23 (Plaintiff's Exhibit 8 was admitted into evidence.)

24 MR. FLYNN: This will be 9?

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1 MR. JAKOPIN: This will be 9.

2 (Plaintiff's Exhibit 9 was marked for identification.)

3 BY MR. JAKOPIN:

4 Q. Handing you a copy of a document that's been marked as  
5 Exhibit 9, is this a business record of the company, Mr. Trepp?

6 A. It looks like it.

7 Q. Is this a true and correct copy of an assignment  
8 signed by Mr. Montgomery and the attached published patent  
9 application entitled "Method and Apparatus For Determining  
10 Pattern Within Adjacent Blocks of Data"?

11 A. Yes.

12 MR. JAKOPIN: May I have Exhibit 9 marked into  
13 evidence?

14 MR. FLYNN: Your Honor, same basis on authentication  
15 for -- but as I understand it, this is all compression stuff.

16 THE COURT: Apparently, it is. You know, my thinking  
17 was whether or not your client really contends that these are  
18 not authentic and that these are not his signatures on these  
19 documents, at least for the purpose of this hearing. The issue  
20 about whether this person who witnessed it was there at the  
21 time, I mean, that -- I mean, that's more -- almost more  
22 James Bond type stuff, and I expect maybe he'll be a witness in  
23 this case before too long.

24 I think, for the purpose of authentication and for

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1 relevance and for allowing these documents to be admitted, that  
2 by looking at the contents of the documents themselves,  
3 Mr. Trepp's testimony, his familiarity with Mr. Montgomery's  
4 signature, this appears to be his signature, is enough for me  
5 to allow these to be admitted.

6 So Exhibit 9 is admitted. And then if you have  
7 testimony down the road, I can certainly reverse my decision on  
8 that. But I think, in terms of relevance and admissibility and  
9 authentication, that there's been enough to allow it for the  
10 purpose of this hearing.

11 MR. FLYNN: And, Your Honor, just so there's some  
12 clarity here, we don't necessarily agree that this is  
13 Mr. Montgomery's signature. The issue with some documents that  
14 have been given to the Court, which is so obviously -- pardon  
15 me -- fraudulent that we have to be cautious with regard to --

16 MR. PEEK: Your Honor --

17 THE COURT: Well, I'm saying --

18 MR. PEEK: I'm giving --

19 THE COURT: Stop, stop, stop. There will be a time  
20 when that can be addressed. I mean, you know, if you object to  
21 the document as fraudulent, then there's got to be more than  
22 that objection. There's got to be some proof, there's got to  
23 be some evidence, there's got to be more than that.

24 And so what I'm saying is, if you can produce that

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1 evidence at some point in time, I'll consider that evidence.

2 But just to say it's fraudulent when we've got testimony to the  
3 contrary -- I'm going to admit the exhibit.

4 MR. FLYNN: Fine, Your Honor.

5 MR. PEEK: And, respectfully, what troubles me is that  
6 Mr. Flynn can come here from Massachusetts and do and say  
7 anything about me, who has submitted these documents, and say  
8 what I submitted was fraudulent. That's outrageous to me. I  
9 just think that is -- you don't just come in here one time,  
10 one shot, and take cheap shots at people.

11 MR. FLYNN: Steve, assume it has got nothing to do  
12 with you.

13 THE COURT: Hold on, gentlemen. Don't get your  
14 feelings hurt about this.

15 MR. PEEK: But just --

16 THE COURT: I've been around the block a couple times.  
17 I understand what's going on. I don't take any of these things  
18 to be personal as to you, and I'm not reading them that way.

19 So let's get back to what we were talking about.

20 Exhibit 9 is admitted. If you have some other similar  
21 documents, go ahead and offer them, and we'll go from there.

22 (Plaintiff's Exhibit 9 was admitted into evidence.)

23 BY MR. JAKOPIN:

24 Q. Mr. Trepp, with respect to Exhibit 9, do you see in



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1 the abstract -- it's the second page -- the first sentence  
2 talks about "The present invention describes methods and  
3 apparatus for providing pattern recognition between adjacent  
4 sequential frames of data?"

5 A. Yes.

6 Q. Were those activities that were going on at eTrepid  
7 in the 2001 time frame when this application was filed?

8 A. Yes.

9 (Plaintiff's Exhibit 10 was marked for  
10 identification.)

11 MR. FLYNN: This is 10?

12 THE CLERK: Yes.

13 THE COURT: How many more of these do you have?

14 MR. PEEK: Five, Your Honor.

15 THE COURT: Why don't you take -- well, I don't want  
16 to tell you how to do this --

17 MR. JAKOPIN: We'll look at them all and save a few  
18 minutes, that's fine, Your Honor.

19 THE COURT: You read my mind.

20 MR. LOGAR: Counsel, for the record, will you identify  
21 what you handed the clerk.

22 MR. FLYNN: And are these going to be in order?

23 MR. JAKOPIN: These are going to be in order.

24 THE CLERK: Top one is 11.

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1 MR. JAKOPIN: Top one is 11.

2 MR. FLYNN: Maybe you could just --

3 THE COURT: You marked Exhibits 11 through what?

4 MR. JAKOPIN: This is 11, 12, 13 and 14 and 15.

5 THE CLERK: Yes, Your Honor, that's what I have.

6 THE COURT: All right.

7 MR. PEEK: Oh, there's one more.

8 THE COURT: So 11 through 16, then? Is that right,  
9 sir?

10 MR. JAKOPIN: Actually, it will be two more, 11  
11 through 17, Your Honor.

12 THE COURT: All right.

13 (Plaintiff's Exhibits 11 through 17 were marked for  
14 identification.)

15 MR. FLYNN: Is 16 the one --

16 MR. JAKOPIN: Exhibit 16 is "System and Method For  
17 Generating Work Conditions in a Surveillance System."

18 BY MR. JAKOPIN:

19 Q. Mr. Trepp, I've handed you copies of documents that  
20 have been marked as Exhibits 11 through 17. Are each of these  
21 copies of the assignment and patent application for a different  
22 invention filed by eTrepid?

23 A. Yes.

24 MR. JAKOPIN: I ask that each of these be admitted

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1 into evidence.

2 MR. FLYNN: Same objection, Your Honor.

3 THE COURT: All right. The objection with regard to  
4 Exhibits 10 through 17 is noted. They'll be admitted.

5 (Plaintiff's Exhibits 10 through 17 were admitted into  
6 evidence.)

7 MR. JAKOPIN: That's all I have of this witness, Your  
8 Honor.

9 THE COURT: All right. Mr. Flynn?

10 MR. FLYNN: Thank you, Your Honor.

11 The last one was 17?

12 THE COURT: Yes, sir.

13 (Defendant's Exhibit 18 was marked for  
14 identification.)

15  
16 CROSS-EXAMINATION

17 BY MR. FLYNN:

18 Q. Mr. Trepp, before we get into the nuts and bolts of  
19 what we're dealing with here, I've given you what -- a copy of  
20 what has been identified thus far as Exhibit 18. Do you  
21 recognize this document, sir?

22 A. Yes.

23 Q. Describe to the Court what it is.

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1 A. It's an amendment to a loan which I gave to Dennis  
2 starting in 1999. And I think the last loan I gave to him was  
3 on December 10th.

4 Q. Of what year, sir?

5 A. '05.

6 Q. And who prepared this document?

7 A. Doug Frye.

8 Q. He's your lawyer?

9 A. Yes.

10 Q. How long has he been your lawyer?

11 A. About 20, 25 years.

12 Q. And in fact, when you went on your six-month cruise  
13 right after the deal was made with Mr. Montgomery, Mr. Frye ran  
14 the company?

15 A. I don't think that's correct. I believe Dennis was  
16 the manager when I was gone, and then I think when I got back,  
17 Doug was made the manager. I'm not a hundred percent sure. I  
18 don't know.

19 Q. Who signed the checks and paid the employees?

20 A. I beg your pardon?

21 Q. When you were gone, who signed the checks and paid the  
22 employees?

23 A. I have no idea.

24 Q. What was -- was Mr. Frye, during that six-month

10 (Pages 34 to 37)

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Page 40

1 period, being paid by eTreppid Technologies?

2 A. As corporate counsel or as an employee?

3 Q. In any way.

4 A. If he had a legal bill and he was corporate counsel,  
5 I'm sure he was being paid.

6 Q. The date of this document is December 28th; is that  
7 correct?

8 A. Well, that's the date it was signed.

9 Q. Now, what date did you sign it?

10 A. What date did I sign it? I signed it the same date he  
11 did.

12 Q. And your testimony is, what day is that, sir? Is that  
13 the day that is recited on the front of the document?

14 A. Yeah.

15 Q. December 28th?

16 A. No. This -- wait. Regroup. I gave Dennis either two  
17 or three of these where I told him I wanted -- he and Brenda  
18 signed the notes. He came back to me after the 8th or the  
19 10th, whenever I gave him the original document, and he said  
20 Brenda wouldn't sign it. And I said, "That's preposterous. I  
21 just gave you more money. You told me you were going to sign  
22 it. Why is this any different than the prior note that you had  
23 where Dennis and Brenda signed them both?"

24 So I got frustrated after two weeks -- or whatever the

1 Yes, I saw him sign it.

2 Q. Have you compared this signature to any of

3 Mr. Montgomery's prior signatures at eTreppid?

4 A. It's irrelevant. I saw him sign it.

5 MR. FLYNN: Your Honor, I move to admit Exhibit 18.

6 And I believe Exhibit 18 was given -- previously given to the  
7 Court as part of the papers.

8 MR. PEEK: No objection, Your Honor.

9 THE COURT: 18 is admitted.

10 (Plaintiff's Exhibit 18 was admitted into evidence.)

11 BY MR. FLYNN:

12 Q. Now, Mr. Trepp, let's take you back to September of  
13 1998, okay? When did you first meet Mr. Montgomery, the date,  
14 if you can recall the date?

15 A. I have no idea. I think --

16 Q. Was it September?

17 A. When was the first time I met him? I think I met him  
18 in 1996, first time.

19 Q. Where?

20 A. At the Eldorado.

21 Q. And did you talk to him then?

22 A. Yes.

23 Q. What did you talk about?

24 A. About what he was proposing.

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1 time frame was, and I said, "Dennis, sign this thing."

2 Q. Or else?

3 A. Or else, what?

4 Q. Did he sign this in your presence?

5 A. Yes, of course.

6 Q. And so the two -- where did the two of you sign it?

7 A. He signed it at the front desk of our building, in the  
8 reception area.

9 Q. And you were right there too?

10 A. I handed it to him. He got the pen and he signed it,  
11 and then I had our receptionist sign as a witness that he saw  
12 him sign it.

13 Q. So this document was signed out in the reception area  
14 of the company; is that correct?

15 A. Correct.

16 Q. And who was this individual, Mr. Bora?

17 A. He's our receptionist.

18 Q. And what relationship is he to you?

19 A. My brother-in-law.

20 Q. And this signature of Mr. Montgomery -- is it your  
21 sworn testimony, sir, that this is Mr. Montgomery's signature?

22 A. Did I see him sign it? Is that the question?

23 Q. Well, is it your testimony this is his signature?

24 A. Well, the answer to that is, did I see him sign it?

1 Q. In 1996?

2 A. Yes.

3 Q. What was he proposing to you in 1996?

4 A. He wanted to start a business.

5 Q. And what did you say?

6 A. "I don't know enough about it."

7 Q. What did he tell you the business was?

8 A. That he had the ability -- he thought he had the  
9 ability over time to develop something that could have a major  
10 impact on the compression and movie industries.

11 Q. Do you recall anything else in that conversation?

12 A. No.

13 Q. Okay. When is the next time you meet Mr. Montgomery?

14 A. It was either nine months or a year later.

15 Q. Where did you meet him?

16 A. The same place.

17 Q. What were you doing there?

18 A. The person introduced me, asked me to come down and  
19 see him again.

20 Q. Okay. Were you there on business?

21 A. I came down to meet him because the third party said  
22 he was going to be there and wanted to talk to me again,  
23 because I hadn't spoken to him in so long.

24 Q. And again, where was this?

11 (Pages 38 to 41)

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1 A. The Eldorado.  
 2 Q. Were you there gambling?  
 3 A. I don't know. It's possible. I could have been.  
 4 Q. Okay. Now, what was said in that conversation, as  
 5 much as you can currently recall?  
 6 A. I don't remember at this -- specific details, but it  
 7 was more of the same. He had said that he had continued to  
 8 make progress on the work that he was doing. And I said,  
 9 finally, I'd be interested in actually looking to see --  
 10 actually, give me a demonstration of what you have so I could  
 11 try to come up with some evaluation as to if I'd be interested  
 12 in investing in it.  
 13 Q. What did you say?  
 14 A. I just told you what I said.  
 15 Q. That no --  
 16 A. What's the question?  
 17 Q. Did you give him money at that point to start a  
 18 business?  
 19 A. Well, of course not.  
 20 Q. Why not?  
 21 A. He didn't do the demonstration yet.  
 22 Q. But this is a year later, so this is in '97?  
 23 A. Yes.  
 24 Q. All right. Did you ask him to do a demonstration?

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1 A. He said that he would like to put together a  
 2 demonstration and we could get together at some point and he  
 3 would give me a demonstration.  
 4 Q. Okay. And then when is the next time that you met  
 5 him?  
 6 A. Sometime in '98. Beginning of '98.  
 7 Q. Where?  
 8 A. I think it was at my home. I'm not a hundred percent  
 9 sure, but I think it was at my home.  
 10 Q. Who arranged that meeting?  
 11 A. The same person.  
 12 Q. Who was it?  
 13 A. Steve Sands.  
 14 Q. And how long did you meet with him in early '98?  
 15 A. For the demonstration purpose?  
 16 Q. For any purpose.  
 17 A. If it's for the demonstration purpose, it was probably  
 18 about a half hour or 45 minutes.  
 19 Q. And what did you see?  
 20 A. He showed me a compression technology, and he showed  
 21 me the Gunga Din pattern recognition stuff that I alluded to  
 22 earlier.  
 23 Q. The Gunga Din pattern recognition?  
 24 A. Yes.

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1 Q. How did he show you the Gunga Din pattern recognition?  
 2 A. He played a CD, and it played on a monitor or a  
 3 laptop. I don't remember exactly what it was.  
 4 Q. A CD of what?  
 5 A. Of the demonstration of the conversion of a  
 6 black-and-white series of frames into a colored series of  
 7 frames.  
 8 Q. So at this point, in your mind, what was your  
 9 understanding of what the technology was that Mr. Montgomery  
 10 was demonstrating to you?  
 11 A. A, he had an ability to compress what he said was  
 12 audio, video, text, imagery, and also having the ability to  
 13 recognize patterns in either a series of frames -- and I'm not  
 14 sure if it was either just video and audio as well and video --  
 15 and being able to convert the video pattern onto future frames.  
 16 Q. So at this point in early 1998, you, as the investor  
 17 in this company, 50/50 with Mr. Montgomery --  
 18 A. We didn't even start the company, just to make sure  
 19 we're on track here.  
 20 Q. You have an understanding that there are two types of  
 21 technology: pattern recognition, as you've described it, and  
 22 data compression; is that correct?  
 23 A. Well, to the point, that is correct. He also told me  
 24 about all these other wonderful things that potentially he

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1 would like to grow and develop over time if he had the  
 2 engineers and the capital to do it.  
 3 Q. But at least, we're clear on those two?  
 4 A. Yeah.  
 5 Q. Those are demonstrated to you in early '98?  
 6 A. Yeah.  
 7 Q. And what did you say to Mr. Montgomery at that time?  
 8 A. That it seemed like it was interesting.  
 9 Q. I beg your pardon?  
 10 A. It seemed like it was interesting and that I thought  
 11 what might be a good way to approach this was to agree, have  
 12 him contribute whatever he had going forward, and then we would  
 13 start a -- basically, a research and development project at  
 14 that time.  
 15 Q. Now, were there two separate demonstrations?  
 16 A. There could have been.  
 17 Q. But there clearly, in your memory, was one for pattern  
 18 recognition based on Gunga Din?  
 19 A. Yes.  
 20 Q. Unquestionably?  
 21 A. Unquestionably.  
 22 Q. And there clearly was one on data compression, but you  
 23 don't recall how he showed you the data compression?  
 24 A. Well, it would have been the same thing. He would

12 (Pages 42 to 45)

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1 have showed me a movie and said this is the size of a normal  
 2 movie, this is the size I made it, or a section of the movie or  
 3 something to that effect.  
 4 Q. Okay. Was it the same movie?  
 5 A. Was the movie Gunga Din that he compressed?  
 6 Q. Yes.  
 7 A. I don't really remember.  
 8 Q. Okay. You do remember, all these years later, there  
 9 were two?  
 10 A. Two what?  
 11 Q. Two demonstrations --  
 12 A. No --  
 13 THE COURT REPORTER: Excuse me. One person at a time,  
 14 please.  
 15 THE COURT: Hold on. Stop.  
 16 THE WITNESS: I apologize, Your Honor, but he keeps  
 17 asking --  
 18 THE COURT: I understand. Like I said earlier, this  
 19 is not like -- this is an unnatural setting for human beings to  
 20 be in. It's not like ordinary conversation. So just try to  
 21 exercise a little care, both of you, to make sure that you're  
 22 not talking over each other, because the court reporter can't  
 23 get that down.  
 24 ////

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1 BY MR. FLYNN:  
 2 Q. I'll rephrase, Mr. Trepp. You're very sure, as you  
 3 sit here today under oath, there were two different things that  
 4 you talked about with Mr. Trepp (sic), that he demonstrated to  
 5 you, data compression and pattern recognition?  
 6 A. Yes.  
 7 Q. When is the next time you meet Mr. Montgomery?  
 8 A. At the end of '98 when we decided we were going to go  
 9 forward in a business.  
 10 Q. And where was that, sir?  
 11 A. I have no idea.  
 12 Q. Do you recall the month?  
 13 A. It was the end of the year. It was before I was going  
 14 to be leaving to go to get married and go on my honeymoon.  
 15 Q. When did you get married and go on your honeymoon?  
 16 A. We left -- well, I got married civilly on  
 17 October 30th, and I got married in the church on November 29th  
 18 of '98.  
 19 Q. October -- what was it, sir?  
 20 A. 30th.  
 21 Q. 1998.  
 22 So how long before that is your best estimate that you  
 23 met with Mr. Montgomery and made an agreement to form the  
 24 company?

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1 A. About a month, month and a half, something like that.  
 2 Q. So sometime in September?  
 3 A. Okay.  
 4 Q. Now, all these documents that your counsel,  
 5 Mr. Jakopin, showed you, did you review them before you come  
 6 into the courtroom?  
 7 A. Did I review these?  
 8 Q. Any of those.  
 9 A. No.  
 10 Q. How long has Mr. Jakopin been your lawyer?  
 11 A. Whenever we started doing the -- I mean -- are you  
 12 saying my lawyer or eTreppid's lawyer?  
 13 Q. All right. Let me rephrase. After you -- before we  
 14 get into the conversation you had with Mr. Montgomery, after  
 15 you decided to form the company, did you call an attorney to  
 16 create paperwork?  
 17 A. Yes.  
 18 Q. Who -- whose attorney was that?  
 19 A. Whose attorney was it? Mine. Doug Frye.  
 20 Q. And -- and when you asked him to create the paperwork,  
 21 did you have any discussion with him -- just yes or no -- about  
 22 what type of paperwork he would create?  
 23 A. Of course.  
 24 Q. Okay. Now, let's go back -- we're going to go back

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1 there, but let's go back to your conversation with  
 2 Mr. Montgomery. Describe to the Court, as best you can, what  
 3 you said to him and what he said to you about forming a  
 4 company.  
 5 A. Who said to who and who said to who?  
 6 Q. What you said to Mr. Montgomery and what  
 7 Mr. Montgomery said to you.  
 8 A. I think I've already said this before, but the best  
 9 that I can recall is, Dennis was going to contribute everything  
 10 he had done, put it into the pot. I would contribute money  
 11 into the pot. We would get a 50/50 interest. I would help him  
 12 get people to develop this research and develop the project to  
 13 make extensions of what he had done and continue to grow a  
 14 business together as partners.  
 15 Q. Well, let's first take the part of your testimony  
 16 where you say "everything he had done."  
 17 A. Yes.  
 18 Q. What was your state of mind, your understanding, in  
 19 September 1998 as to what "everything he had done" meant, that  
 20 he was contributing to your company?  
 21 A. Well, clearly, the compression that he showed me,  
 22 clearly, the pattern recognition that he showed me, and any  
 23 other works that he said he had potentially in the hopper that  
 24 he was working on, that this would be part of the deal that we

13 (Pages 46 to 49)



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1 were going to be partners going forward with.  
 2 Q. Did you take notes?  
 3 A. Did I what?  
 4 Q. Did you take any notes of what he would be  
 5 contributing?  
 6 A. No.  
 7 Q. Did you ask him whether he had any copyrights?  
 8 A. No.  
 9 Q. Did you ask him if he had any patents?  
 10 A. I don't believe I personally did.  
 11 Q. Did you ask him if he had ever assigned any interest  
 12 in any of these things that you were getting to any other  
 13 company?  
 14 A. No.  
 15 Q. Did, at any time, you have a meeting with Mr. Frye, as  
 16 your attorney, and Mr. Montgomery over what Mr. Montgomery was  
 17 contributing and what you were contributing?  
 18 A. I -- I don't recall having a meeting with the three of  
 19 us, but I certainly would have told Doug what my impression of  
 20 the deal was and asked Doug to have a discussion either with  
 21 Dennis or his counsel or -- so that we could actually put  
 22 together a term sheet and actually conclude a deal.  
 23 Q. Now, you'd consider yourself a sophisticated  
 24 businessman?

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1 A. Yes.  
 2 Q. How many companies do you own?  
 3 A. I don't know. More than five.  
 4 Q. But you don't know?  
 5 A. No, I don't know. I have a lot of different  
 6 investments. Would you like me to think about it?  
 7 Q. Well, let me ask you this: As a sophisticated  
 8 businessman with all your different investments, you're  
 9 familiar with legally binding contracts?  
 10 A. Yes.  
 11 Q. And Mr. Frye, who has been your lawyer for 20, 25  
 12 years, is someone you trust as being familiar with creating  
 13 fairly elaborate intellectual property contracts?  
 14 A. Yes. And if he wasn't satisfied with it, he'd find  
 15 another attorney that could help him with it.  
 16 Q. Did Pillsbury Madison play any role in creating the  
 17 documents, the contribution agreement or the operating  
 18 agreement, for eTreppid?  
 19 A. I don't know specifically, but I find it hard to  
 20 believe that that would be the case.  
 21 Q. So you relied on Mr. Frye --  
 22 A. Correct.  
 23 Q. -- to create a sophisticated intellectual property  
 24 document where you were investing \$1.3 million, correct?

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1 A. If you could define what -- is that a legal term?  
 2 Q. Well, you understand a simple little contract -- two,  
 3 three, four pages -- as opposed to something like this  
 4 contribution agreement here?  
 5 A. Well, I would say --  
 6 Q. It's Exhibit 4.  
 7 A. I would say, typically, most of the contracts we do  
 8 are like that, not a two-, three-page, whatever you just  
 9 described.  
 10 Q. Typically, most of them are like this?  
 11 A. Yes.  
 12 Q. Now, did you instruct Mr. Frye to go meet with  
 13 Mr. Montgomery?  
 14 A. I might have asked him to call him or call his  
 15 counsel. I don't think I ever -- I guess "no" is the answer to  
 16 that question. Did I ever tell Doug to go meet Dennis?  
 17 Q. Yes.  
 18 A. Not that I can recall.  
 19 Q. Well, obviously, it's a key issue to you, is -- you  
 20 know you're putting in 1.3 million, and you want some type of a  
 21 writing as to what Mr. Montgomery is putting in, correct?  
 22 A. Sure. Or I would like an understanding as to what  
 23 that would be.  
 24 Q. Now, I know this is an irrelevant question, but was

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1 \$1.3 million a lot of money to you?  
 2 MR. PEEK: If he's going to say it's irrelevant, then  
 3 we know it's irrelevant, and I'm going to object to it as being  
 4 irrelevant.  
 5 THE COURT: You know, I think it probably is relevant.  
 6 Let him answer the question.  
 7 BY MR. FLYNN:  
 8 Q. In September 1998.  
 9 A. And the question was?  
 10 Q. Was that a lot of money to you then?  
 11 A. It's a lot of money to anybody anytime. It certainly  
 12 is -- yes, it's a lot of money.  
 13 Q. So it was a lot of money to you when you made your  
 14 deal with Mr. Montgomery because you knew you were putting in a  
 15 lot of money and you wanted to know what he was putting in,  
 16 correct?  
 17 A. Sure.  
 18 Q. Now, you don't remember where the conversation took  
 19 place?  
 20 A. No.  
 21 Q. You don't remember when it took place?  
 22 A. I gave you a general idea.  
 23 Q. Sometime in September?  
 24 A. Yeah.

14 (Pages 50 to 53)

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1 Q. Do you know how long it lasted?

2 A. No.

3 Q. Was anyone present?

4 A. I don't recall.

5 Q. Did you write out a check for \$1.3 million on

6 September 28th --

7 A. I don't know.

8 Q. -- 1998?

9 Was there an escrow agreement?

10 A. I would assume so, but I don't know.

11 Q. In most of your deals, are there escrow agreements

12 where one party puts in whatever they're putting in and you put

13 up the 1.3?

14 A. It would seem to be logical, but I truly don't know.

15 Q. Did you wire or transfer any monies into Doug Frye's

16 account?

17 A. It's very possible.

18 Q. Did you write a check for \$1.3 million? You don't

19 know, do you?

20 A. I don't know.

21 Q. But you knew that was your part of the deal, but as

22 you sit in the courtroom today, you don't know whether you know

23 you, as part of your deal, paid the money, correct?

24 A. Do I know the money got there? Yes.

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1 Q. How did it get there?

2 A. I have no idea.

3 Q. When did it get there?

4 A. I don't know.

5 Q. Did it get there in dribs and drabs over the next year

6 or so?

7 A. I don't know, but I doubt that strongly.

8 Q. Did it get -- well, dribs and drabs. Did it get there

9 in more than one check or wire transfer over the next year or

10 so?

11 A. I don't know. That would seem very unlikely to me.

12 Q. In that first year -- or, strike that.

13 Shortly after the deal was made, you got married

14 sometime in late October, and then you went on a six-month

15 cruise?

16 A. Four months.

17 Q. Four months?

18 A. Yes.

19 Q. Were you gone to June 1999?

20 A. I think I got back from the cruise in either the end

21 of April or the beginning of May. It could have been June.

22 I'm not sure.

23 Q. And who did you leave in charge of the money part of

24 the business between September 28th and the time you got back

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1 in May or June?

2 MR. PEEK: Is there some relevance of this line of

3 examination that relates to the issues that have been framed in

4 a preliminary injunction?

5 MR. FLYNN: Yes, Your Honor.

6 THE COURT: What is the relevance?

7 MR. FLYNN: He has the burden of proving that he will

8 prevail on the merits. If there's a failure of consideration

9 under the contract, if there's a breach of the contract, then

10 he can't possibly prevail on the merits.

11 THE COURT: Well, let me ask this question just

12 directly: Are you saying that Mr. Trepp didn't -- or eTrepid

13 didn't pay the money?

14 MR. FLYNN: There are no books and records that my

15 client has ever been privy to. It's highly unlikely, from what

16 I understand, the way the company was run, that the 1.3 ever

17 got in specifically on or about September 28th as his part of

18 the deal. But the CD was put in for the data compression

19 technology as Mr. Montgomery's part of the deal, and that goes

20 to the heart of the intent and understanding of the parties.

21 THE COURT: Well, I mean, it's a little hard for me to

22 imagine that he gave him the CD and then waited how many years

23 now and said, "By the way, you never paid me my 1.3 million."

24 As the record stands right now, there's testimony in

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1 whatever form and under whatever circumstances, the money was

2 paid. If you have evidence that it wasn't paid, then that can

3 be presented. And so, the objection to relevance is overruled.

4 But go ahead. I'm sorry I took so long to rule on

5 that. Go ahead.

6 BY MR. FLYNN:

7 Q. Mr. Trepp, but just to clarify this and then we'll

8 move on, you don't know when the money or how much actually got

9 put in after September 28th, do you?

10 A. No, but I could make one phone call and tell you.

11 Q. Okay. Well, all right. Picking up on that point, you

12 could have told Mr. Montgomery over the years and shown him

13 specifically how much you specifically put in and when, could

14 you not have?

15 A. I could have done a lot of things, but what is the

16 point of showing him? If the money is there, it's there.

17 Q. Well, when you went on your cruise, did you know

18 whether the 1.3 was there or not?

19 A. At this moment, I don't. But I promise you, in a

20 phone call, I could tell you.

21 Q. The CD -- let's look at the contribution agreement.

22 Paragraph 1.2.1, Your Honor, which --

23 THE COURT: We're talking about Exhibit 3,

24 paragraph 1.2.1?

15 (Pages 54 to 57)

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1 MR. FLYNN: Yes, Your Honor.  
 2 THE COURT: By the way, while we're talking about that  
 3 exhibit, where is -- is there -- there's reference to  
 4 Schedule 1.2.2, and then when I go back to that, it indicates  
 5 that it's to be completed.  
 6 MR. FLYNN: Correct, Your Honor.  
 7 THE COURT: Is there a completed Schedule 1 point --  
 8 I'm sorry, 1.2.2?  
 9 MR. FLYNN: It's never been given to us, Your Honor.  
 10 THE COURT: Counsel for the Plaintiff, do you know?  
 11 MR. PEEK: Your Honor, it was to be provided by  
 12 Mr. Montgomery. If you actually look at all of the  
 13 contributor's books and records related to the contributed  
 14 assets, it was all of contributed books and records related to  
 15 the contributed assets.  
 16 1.2.2 is certain contributors' tangible personal  
 17 property. Contributory, Your Honor, identified in this is  
 18 Montgomery.  
 19 THE COURT: I understand.  
 20 MR. PEEK: So he was to provide the 1.2.2. So, for  
 21 Mr. Flynn to say, oh, my gosh, they never provided it, it was  
 22 his obligation to provide the 1.2.2, and I guess now that we've  
 23 learned -- it looks like we got gamed a little bit by the way  
 24 this has gone on now eight years later.

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1 MR. FLYNN: The lawyer drew up the document.  
 2 THE COURT: My question was simply, is there a  
 3 completed document? I'm understanding, from what's been said,  
 4 that there is not, so let's go ahead.  
 5 BY MR. FLYNN:  
 6 Q. Mr. Trepp?  
 7 A. Yes?  
 8 Q. Would you look at paragraph 1.2.1.  
 9 A. Is this about the CD?  
 10 Q. Yes, CD 1.  
 11 A. I looked at it before.  
 12 Q. You're familiar with it?  
 13 A. Yes.  
 14 Q. You're comfortable with your familiarity with this  
 15 paragraph?  
 16 A. Yes.  
 17 Q. Now, that CD, did you have any conversation with  
 18 Mr. Frye about how the intellectual property for data  
 19 compression would be described in Exhibit 3?  
 20 A. No.  
 21 Q. Did you have any discussion with Mr. Montgomery as to  
 22 how it would be described?  
 23 A. No.  
 24 Q. Did you rely on Mr. Frye, as your attorney, to create

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1 a document wherein the contribution by Mr. Montgomery would be  
 2 properly described?  
 3 A. Yes.  
 4 Q. And where is CD Number 1, Mr. Trepp?  
 5 A. I have no idea.  
 6 Q. Have you asked Mr. Frye for CD Number 1?  
 7 A. I think I asked him if he had it.  
 8 Q. When the 1.3 million was put in, did you know where  
 9 CD Number 1 was?  
 10 A. No.  
 11 Q. Do you see anything in paragraph 1.2.1 about pattern  
 12 recognition?  
 13 A. Which one are we looking at now?  
 14 Q. The one you just said you were familiar with.  
 15 MR. LOGAR: Exhibit number?  
 16 THE COURT: 3.  
 17 THE WITNESS: I think I said I was familiar with the  
 18 CD. I'm not familiar with the paragraph you were alluding to.  
 19 BY MR. FLYNN:  
 20 Q. I'm sorry, I thought you said you were familiar with  
 21 the paragraph.  
 22 A. No, I said I was familiar with the CD 1 -- which  
 23 exhibit?  
 24 MR. FLYNN: The record speaks for itself.

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1 THE WITNESS: Exhibit what?  
 2 MR. FLYNN: Exhibit 3, paragraph 1.2.1.  
 3 THE COURT: Page 1.  
 4 BY MR. FLYNN:  
 5 Q. It's actually the last two or three lines of page 1.  
 6 A. Okay. I'm sorry. Page what?  
 7 Q. Page 1, Exhibit 3.  
 8 A. Yep.  
 9 Q. Last few pages. Let's, first of all, establish your  
 10 signature on this document, which is at the end, on page  
 11 number --  
 12 THE COURT: 12?  
 13 MR. FLYNN: I believe it's 12. I've got to check.  
 14 Page number 12.  
 15 BY MR. FLYNN:  
 16 Q. Is that your signature?  
 17 A. Yes.  
 18 Q. And when you executed this document, did you ask to  
 19 see CD Number 1?  
 20 A. I don't recall.  
 21 Q. Now, going through the paragraph 1.2.1, the bottom of  
 22 the page, page 1 --  
 23 A. Yes.  
 24 Q. -- you see that line that says -- let's read it into

16 (Pages 58 to 61)

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1 the record. Follow me as I read it. Okay, sir?

2 A. Uh-huh.

3 Q. This is what Mr. Montgomery is contributing: "All of  
4 Contributor's know-how; trade secrets; patent rights,  
5 copyrights, trademarks, licenses and permits, registered or  
6 unregistered, pending or approved; software programs and all  
7 programming and source codes used in connection therewith or  
8 otherwise required to operate any component thereof; and all  
9 programming documentation, designs, materials and other  
10 information, all in whatever form and wherever located,  
11 relating to or used in connection with, or otherwise describing  
12 or consisting of any part of, the software compression  
13 technology contained on that certain Software Compression  
14 Engine Development Program contained on CD No. 1, all of which  
15 is being contributed by contributor hereunder (collectively,  
16 the "Technology").

17 Did I read that correct, sir?

18 A. Yes.

19 Q. Was that your understanding when you executed the  
20 agreement as to what Mr. Montgomery was contributing?

21 A. Well, yes.

22 Q. Now, your understanding for the prior nine months,  
23 however, was that he was also contributing something you're  
24 calling today "pattern recognition technology"; is that

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1 A. I have no idea.

2 Q. Do you know if Mr. Frye -- strike that. Did you ever  
3 have a conversation with Mr. Frye about whether or not he ever  
4 got CD Number 1?

5 A. Not that I can recall.

6 Q. Now, let's move forward. I believe your testimony was  
7 on direct, and having in mind Mr. Venable's testimony, that you  
8 repeatedly, over the years, asked for CDs to bring you up to  
9 date so you would possess the current technology being worked  
10 on at eTreppid. Is that correct?

11 A. Copies of the source code that were generated by  
12 eTreppid Technologies at eTreppid Technologies, yes.

13 Q. How many times over the years did you ask for those?

14 A. Well, at a minimum of once a year and at any time we  
15 had made any kind of new breakthrough on something that we'd  
16 been working on through the research and development and over  
17 the years we were in business.

18 Q. You filed a declaration in this case, did you not?

19 A. Yeah.

20 Q. Did you say that you repeatedly asked Mr. Montgomery  
21 for the CDs so you'd have a copy of what the company was  
22 working on?

23 A. Yes, to protect his family and mine in case there was  
24 a disaster.

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1 correct?

2 A. Yes.

3 Q. And you don't see the term "pattern recognition  
4 technology" there, do you?

5 A. No, I do not.

6 Q. And it was your lawyer who drew this up?

7 A. Yes.

8 Q. Now, let's go over to the next page, paragraph 1.3,  
9 "Excluded Assets and Liabilities." Read with me, if you will.

10 "Notwithstanding any of the foregoing, Contributor is  
11 specifically not contributing, transferring or conveying to  
12 INTREPID under this Agreement or by any other means, nor is  
13 eTreppid acquiring from Contributor, any other tangible or  
14 intangible assets of Contributor not specified herein ..."

15 Did I read that correctly?

16 A. Yes.

17 Q. Was that your understanding when you executed this  
18 document prepared by your lawyer?

19 A. Yes.

20 Q. Now, did you consider CD Number 1 an asset of  
21 eTreppid, then Intrepid?

22 A. Yes.

23 Q. And going back to Mr. Frye again, Mr. Frye was signing  
24 the checks for everybody?

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1 Q. And then -- feeling the importance of this technology,  
2 you then went and put them in how many different safes?

3 A. One.

4 Q. In a safe-deposit box?

5 A. Yes.

6 Q. And how many CDs, or whatever, did you put in this  
7 safe-deposit box?

8 A. I don't know the exact number. It was probably around  
9 a dozen.

10 Q. Because you had in mind the importance of you having  
11 possession of the source code for this technology that you felt  
12 you bought when you put in the 1.3 million, correct?

13 A. That's totally incorrect. I wanted the source code  
14 backup over the seven years we were in business to preserve it  
15 for his family, my family, and for the company's best  
16 interests.

17 Q. But as you sit here today, the number one source code  
18 containing the guts of the deal --

19 A. Yeah.

20 Q. -- you don't know where it is?

21 A. No.

22 Q. And you've never asked anyone for it?

23 A. I don't think there would be any reason to ask for it,  
24 because when we started the business, I assumed Dennis would

17 (Pages 62 to 65)



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1 have just put it onto our workstations or servers, or whatever  
 2 it was, and that was the start of the business that we had.  
 3 Q. Oh, so -- but then as the years went on, you wanted  
 4 all these other CDs, but the Number 1 CD, you just assumed --  
 5 you trusted Dennis that he put it into the company?

6 A. Well, why wouldn't I?

7 Q. Well, Mr. Trepp, we're going to determine that.

8 But let me ask you this, sir: Did you have any reason  
 9 to doubt, as the company went forward, that all of the  
 10 compression technology that you bought, as Mr. Montgomery's  
 11 50/50 partner, got put into eTrepid, or then Intrepid, was  
 12 then being -- actually then being used?

13 A. Can you please say that again.

14 Q. Have in your mind what you bought from Mr. Montgomery  
 15 that was on CD Number 1, compression technology. Is there any  
 16 doubt in your mind, as you sit here today, that you got that  
 17 and it was then being used in the company over the ensuing  
 18 years?

19 MR. PEEK: Your Honor, he didn't get it. Intrepid got  
 20 it, or eTrepid got it. He keeps referring to Mr. Trepp as  
 21 though he's buying it or Mr. Trepp is receiving it. It went  
 22 into the company.

23 THE COURT: I understand that.

24 MR. FLYNN: There are two principals.

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1 THE COURT: I understand.

2 BY MR. FLYNN:

3 Q. Did you have any doubt that the company got -- when  
 4 you put the 1.3 in some form over some time in, and so the  
 5 company was using that technology that was on CD Number 1?

6 A. Do I believe?

7 Can I ask a question, Judge, because I'm not sure I  
 8 understand.

9 THE COURT: Well, if you don't understand the  
 10 question, just simply say "I don't understand the question,"  
 11 and he'll rephrase it.

12 THE WITNESS: Can you please reword it.

13 BY MR. FLYNN:

14 Q. Yeah. Sometimes as the day goes on, given my advanced  
 15 age, my questions get worse, but I'll try to make it simple.

16 Is there any doubt in your mind, as you sit here  
 17 today, that you got and the company used, for your 1.3 million,  
 18 the compression technology that was on CD Number 1?

19 A. Yes. I believe we got -- if there was a CD 1, I  
 20 believe we got what we bargained for.

21 Q. Now, you do not have a security clearance equal to  
 22 Mr. Montgomery's, do you?

23 A. At this time?

24 Q. Correct.

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1 A. No.

2 Q. Do you know what his security clearance is?

3 A. Yes, TSSCI.

4 Q. And what security clearance do you have?

5 A. TS, and my SCI is pending.

6 Q. Have you ever had any conversations with  
 7 Mr. Montgomery in the presence of any government official --  
 8 just yes or no --

9 A. Yes.

10 Q. -- about the government's attitude toward you as a  
 11 principal at eTrepid?

12 A. Not that I can recall.

13 Q. Have you ever had any attitude -- strike that.

14 Have you ever had any discussion with Mr. Montgomery  
 15 in the presence of a government official -- just yes or no --  
 16 about your background at Drexel vis-a-vis government contracts  
 17 at eTrepid?

18 A. Yes.

19 Q. Now, is Mr. Milliken -- strike that.

20 Did you tell Mr. Montgomery that Mr. Milliken was  
 21 putting \$12 million into eTrepid for 5 percent of the company?

22 A. No.

23 Q. Mr. Milliken is a friend of yours?

24 A. I wouldn't call him a friend.

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1 Q. Well, you were both at Drexel together?

2 A. We worked together, that's correct.

3 Q. At Drexel?

4 A. Yes.

5 Q. Did you tell Mr. Montgomery that Mr. Milliken gave you  
 6 \$30 million to go on an extended -- a cruise to avoid being a  
 7 witness?

8 A. What?

9 Q. During the Drexel period.

10 MR. PEEK: Your Honor, this is way out of line and  
 11 way --

12 THE COURT: Well, I don't understand the relevance of  
 13 this at all, I really don't.

14 MR. PEEK: -- time, collateral -- collateral to this  
 15 case, Your Honor, as well, and nothing to do with this case at  
 16 all.

17 MR. FLYNN: The relevance is -- as I understand it,  
 18 it's highly unlikely that the government will ever make a deal  
 19 exclusively with Mr. Trepp with regard to technology they're  
 20 seeking an injunction on.

21 MR. PEEK: Your Honor, they will do and say anything  
 22 without evidence, and it -- frankly, it's getting to the point  
 23 now of how many times can you just say it and hope that maybe  
 24 some of it will stick, without it really coming from the

18 (Pages 66 to 69)

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1 witness stand?

2 MR. FLYNN: Mr. Montgomery will so testify.

3 MR. PEEK: This gentleman has done business with the  
4 government. The contracts are with him. He's the majority  
5 owner or has the most stock in it, and he has relationships  
6 with General Bath, Congressman Gibbons, with John Hennessey and  
7 others. So this is --

8 THE COURT: Will you trust me that I know the  
9 difference between statements of counsel and evidence?

10 MR. PEEK: I will, Your Honor. I apologize. I don't  
11 mean to speechify, but it's getting a bit much, late in the  
12 day.

13 THE COURT: It's late in the day. And I think the  
14 more we can avoid this kind of stuff, the better we're going to  
15 be in moving the case along.

16 And I understand that there's a statement been made,  
17 and I'll consider it for what evidentiary value, if any, it  
18 might have.

19 MR. PEEK: Again, I'm going to object to the same  
20 thing.

21 THE COURT: I understand. I understand.

22 MR. PEEK: Is it overruled or sustained?

23 THE COURT: The objection is overruled. I think if  
24 you use the standard for relevance, there might be some

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1 relevance, but let's not spend too much more time on this.

2 MR. FLYNN: I won't, Your Honor.

3 BY MR. FLYNN:

4 Q. Mr. Trepp, how many years has it been since the  
5 government, on certain types of highly classified technology,  
6 has been dealing with you and Mr. Montgomery? How many years,  
7 sir?

8 A. It's been months.

9 Q. No, starting from the beginning, with the first  
10 government contract. How far back does that go, from the  
11 present, from January -- from now, February 2006?

12 A. Okay. Can you ask the question again, please.

13 THE COURT: You want to have it read back?

14 MR. FLYNN: No, that's okay. I think it would be  
15 faster.

16 BY MR. FLYNN:

17 Q. Over how many years have you personally been dealing  
18 with the United States Government, any department thereof, with  
19 regard to highly classified software technology?

20 A. I believe it was December of '03.

21 Q. Okay. Let's take the December of '03. And it is now  
22 February of '06, correct?

23 A. Uh-huh.

24 Q. During that time frame, you never got the highest

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1 security clearance, but Mr. Montgomery did, correct?

2 A. Yes. There was a reason for that, but yes.

3 Q. That entitled him, within eTreppid, to deal with the  
4 government on these highly classified materials with this  
5 highly classified technology, but not you?

6 A. That's nonsense.

7 Q. What weren't you entitled to deal with?

8 A. Anything that was SCI-rated, until I got my SCI  
9 clearance.

10 Q. Well, as we sit here today, do you have a clearance  
11 equal to Mr. Montgomery's?

12 A. No.

13 Q. Okay. What can he deal with that you can't deal with?

14 A. Something that he's read into that I wouldn't be.

15 Q. Okay. Now, do you know what he's been read into that  
16 you haven't been read into?

17 A. Nothing.

18 Q. Nothing?

19 A. Nothing.

20 Q. And how do you know that? Is this based on the  
21 lunches with Mr. Montgomery every year for the last seven  
22 years?

23 A. No, I -- I've dealt with the government on -- on a  
24 contractual basis or on a day-to-day basis as to asking us,

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1 meaning the company, what they would like to do for them.

2 Q. All right. Let's take the time frame, September '04.

3 A. Yes.

4 Q. Just yes or no: Did a certain agency of the  
5 government want to purchase certain technology that  
6 Mr. Montgomery had been dealing with, with the government on?

7 A. Can I ask you a question, Your Honor, because it makes  
8 a difference.

9 Are you saying the government was dealing with  
10 Mr. Montgomery on a deal that had nothing to do with eTreppid?

11 Q. I'm saying that Mr. Montgomery was working with the  
12 government on the contents of the technology.

13 A. Yes.

14 Q. And did you speak with the government about how much  
15 you wanted for the contents of that technology?

16 A. Yes.

17 Q. You did tell the government how much you wanted for  
18 the technology, correct?

19 A. I told the government what we would be happy to sell  
20 the technology for.

21 Q. How much?

22 A. A hundred million dollars.

23 Q. In connection with that conversation, did you tell

24 them the government would have to post a bond for \$1 billion?

19 (Pages 70 to 73)

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1 A. There was a specific discussion relative to three  
2 different pieces of this conversation. One was, we would  
3 license the technology to them for 10 million. We would sell  
4 the technology to them for 100 million. And we wanted to have  
5 a bond posted relative to having our technology secured in the  
6 sense that it wouldn't get out of the government's hands.

7 Q. How much was the bond?

8 A. A, they never offered us a penny; B, we got a  
9 month-to-month license agreement to do the job; and C, they  
10 laughed and said they wouldn't give us a nondisclosure  
11 agreement for any price.

12 Q. How much of a bond did you ask for?

13 A. How much of a bond? It was either 100 million or  
14 500 million. I don't remember.

15 Q. Was it one billion?

16 A. I highly doubt it. I don't remember, though, exactly.

17 Q. You don't remember. All right.

18 Now, in the context of this conversation, which you  
19 say is 100 million to purchase --

20 A. Well, we offered to sell it.

21 Q. Let me finish, please, sir.

22 A. Yep.

23 Q. Would you say it was 100 million to purchase --

24 forgetting for the moment the license thing, or whatever, in

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1 some bond somewhere -- between 100 million or 500 million or  
2 possibly a billion, at some point, did you tell Mr. Montgomery  
3 not to process any more of the things the government wanted him  
4 to process?

5 A. Absolutely not.

6 Q. At some point, did the government stop paying for what  
7 Mr. Montgomery was processing?

8 A. I don't understand what that question means. The  
9 government was only paying eTreppid. They were never paying  
10 Mr. Montgomery anything. But I don't understand. Did the  
11 government terminate our contract, is that the question?

12 Q. Well, I'm asking you, did you terminate the contract  
13 because you wanted \$500 million and you said to Mr. Montgomery,  
14 "Don't do any work for them"? Did you do that?

15 A. Did I ask for \$500 million and terminate the contract?

16 Q. Yes.

17 A. Absolutely not.

18 Q. You are aware the government was -- that  
19 Mr. Montgomery was processing things for the government during  
20 this time period?

21 A. I'm aware that eTreppid was processing things for the  
22 government.

23 Q. Who was doing the work?

24 A. Dennis -- Dennis was doing the bulk of the processing.

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1 Q. How many hours a day was he working?

2 A. It depended upon what was the time frame and what they  
3 were asking him to do. In the -- the beginning, a lot; in the  
4 end, very, very little.

5 Q. Did he generally work seven days a week at 18 hours a  
6 day?

7 A. No.

8 Q. Now -- but you know that -- how often were you there?

9 A. In the beginning, we were both there an enormous  
10 amount of time.

11 Q. In the first six months or four months until June  
12 of '99, you were gone?

13 A. You're talking about a contract that was dealing in  
14 2002, not in 1999.

15 Q. I understand that. And you were there all during that  
16 time frame in 2002?

17 A. What does that question mean?

18 Q. Were you there seven days a week at eTreppid with  
19 Mr. Montgomery, processing this classified information, seven  
20 days a week, 18 hours a day?

21 A. No.

22 Q. How much did the government pay during the year 2003  
23 for the work Mr. Montgomery was doing?

24 A. The government paid eTreppid a contract of -- I think

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1 it was a million eight.

2 Q. Was the first check two and a half million from the  
3 government?

4 A. There was no chance that the first check was two and a  
5 half million, no chance.

6 THE COURT: Excuse me. I need to make a phone call at  
7 5 o'clock. It's now about one minute after that. How much  
8 longer are we going to take to get done?

9 MR. PEEK: Your Honor, this is our last witness, so I  
10 can't speak for Mr. Flynn.

11 MR. FLYNN: And I'm going to put Mr. Montgomery on.  
12 My direct is probably 30 to 40 minutes.

13 THE COURT: All right.

14 MR. PEEK: I will try to restrain myself on  
15 cross-examination.

16 MR. LOGAR: Which will be difficult.

17 MR. PEEK: Which is going to be difficult.

18 THE COURT: I was going to comment on that. I'll let  
19 Mr. Logar make that comment.

20 All right. Let's be in recess until 20 minutes after,  
21 and then we'll finish up for the night.

22 (A brief recess was taken at the hour of 5:03 p.m.)

23 THE COURT: All right. Please be seated. All right.

24 Please continue.

20 (Pages 74 to 77)

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1 MR. FLYNN: Thank you, Your Honor.  
 2 BY MR. FLYNN:  
 3 Q. Again, Mr. Trepp, let's go back to September '04. Was  
 4 a certain government contract ending in September '04?  
 5 A. Yes.  
 6 Q. And did the government want to extend it?  
 7 A. They asked if we could do a small amount of additional  
 8 work relating to that contract.  
 9 Q. And did they want to extend it for a minimum period of  
 10 three months?  
 11 A. I don't recall if that was exactly what it was, but  
 12 they did want to extend it for a limited period of time.  
 13 Q. Were you in the presence of Mr. Montgomery -- strike  
 14 that.  
 15 Did you and Mr. Montgomery have a discussion about  
 16 extending it?  
 17 A. Probably.  
 18 Q. Do you recall anything about that discussion? Just  
 19 yes or no.  
 20 A. Not in detail.  
 21 Q. Did either one of you say no to the government, you  
 22 wouldn't extend it?  
 23 A. At some point, we -- we both agreed we weren't going  
 24 to continue it.

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1 Q. You and the government or you and Mr. Montgomery?  
 2 A. Me and the government.  
 3 Q. Agreed you wouldn't continue it; is that your  
 4 testimony?  
 5 A. They wanted to terminate the contract and said there  
 6 were -- were some other things that they would like us to do up  
 7 until some specific date, and I don't remember what that  
 8 specific date was.  
 9 Q. Did Mr. Montgomery want to extend the contract?  
 10 A. I don't think that option was available to us to  
 11 extend it.  
 12 Q. Just yes or no: Was this a national security current  
 13 issue in September '04?  
 14 MR. PEEK: Objection. What is "this"?  
 15 BY MR. FLYNN:  
 16 Q. The nature of what the government wanted you to do.  
 17 A. It had to deal with potential national security  
 18 interests.  
 19 Q. Can you imagine a higher priority than what these  
 20 interests involved?  
 21 A. Yes.  
 22 Q. Is this when you told the government 100 million?  
 23 A. Absolutely not.  
 24 Q. When did you tell the government 100 million?

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1 A. We had been negotiating for a protracted period of  
 2 time prior to September of '04.  
 3 Q. Okay. When did you first tell the government  
 4 100 million?  
 5 A. Either the end of '03 or the beginning of '04. And  
 6 when you say "100 million," that was the price we had offered  
 7 to sell all of our technology to them for.  
 8 Q. Under the oath that you signed, you cannot disclose  
 9 the contents of those negotiations, correct?  
 10 A. I'm not sure that that is correct.  
 11 Q. Do you know whether, under the oath in the clearance  
 12 that Mr. Montgomery had, he could discuss those negotiations?  
 13 A. He didn't sign for the company; I did.  
 14 Q. That wasn't the question, Mr. Trepp. Could he discuss  
 15 them with the government?  
 16 A. He could discuss anything with the government.  
 17 Q. Now, at this point in time, September '04, the two of  
 18 you started as 50/50 partners, founders in eTrepid  
 19 Technologies dealing with data compression on CD Number 1; is  
 20 that correct?  
 21 A. We started as 50/50 owners.  
 22 Q. In September '04, what is your testimony as to what  
 23 Mr. Montgomery then owns?  
 24 A. I'm not exactly sure in September of '04, but I

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1 believe he owns approximately 30 percent right now. I believe  
 2 it was the same then, but I'm not positive of that fact.  
 3 Q. He got somehow -- he somehow went from 50 to  
 4 30-something percent?  
 5 A. Yes.  
 6 Q. Now, I'm not going to spend a lot of time on this  
 7 because I think, at some point, it's going to become the core  
 8 of the case. But let me just ask you this: In the first stock  
 9 transaction, how did Mr. Montgomery go from 50 percent to  
 10 40 percent?  
 11 A. I don't know in the first transaction that he went  
 12 from 50 to 40. I believe I have a fairly good understanding of  
 13 how he was diluted over time.  
 14 Q. Was some of his stock, when it went from 50 to 40,  
 15 sold for 1.5 million to one of your friends?  
 16 A. No.  
 17 Q. To someone that you know?  
 18 A. No.  
 19 Q. Who's Wayne Primm?  
 20 A. Wayne Primm is a good friend of mine.  
 21 Q. Was Mr. Montgomery's stock sold for \$1.5 million to  
 22 Wayne Primm?  
 23 A. In one transaction, yes, that's true.  
 24 Q. And then Mr. Montgomery wrote a check back to you?

21 (Pages 78 to 81)



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1 A. Back to whom?

2 Q. Well, Friendly Capital.

3 A. To repay a loan that he borrowed.

4 Q. Let me finish the question.

5 A. Okay.

6 Q. Friendly Capital is you?

7 A. I am the president of the general corporate partner of

8 Friendly Capital LP.

9 Q. And when Mr. Primm, your friend, paid the 1.5 million,

10 Mr. Montgomery paid back Friendly Capital \$975,000.29; is that

11 correct?

12 A. I don't know that that's the exact number, but I

13 believe that's very possible.

14 Q. And it's your testimony that was for loans?

15 A. The repayment back to Friendly Capital?

16 Q. Yes.

17 A. Yes, that was to repay a loan and probably interest.

18 Q. So you didn't want to see Mr. Montgomery diluted,

19 according to your direct testimony?

20 A. That is correct.

21 Q. But you arranged the sale with one of your buddies for

22 him to sell 10 percent of the eTrepid stock?

23 A. He did not sell 10 percent of the eTrepid stock.

24 Q. Did he go from 50 to 40?

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1 A. Yes, but you -- if you would like to ask me how he got

2 from where he was to where he is, I'd be happy to go through

3 that, if I can. He did not go from 50 to 40 having to do

4 with -- anything to do with his sale to Wayne Primm.

5 Q. How many different alleged dilutions took place?

6 A. There weren't any alleged dilutions. There were sales

7 or gifts or capital raises.

8 Q. I'm not going to spend much more time on this, but

9 when you -- your company was originally 50/50, just the two of

10 you?

11 A. Yes.

12 Q. Over time, he gets down to 30, and a lot of your

13 friends, all of a sudden, have stock interests. Is that

14 basically correct, according to Exhibit A to the amended

15 operating agreement that you put into evidence?

16 A. Yes, that is correct.

17 Q. And your partner, you didn't want to get diluted; is

18 that correct?

19 A. That is correct, at a point.

20 Q. All right. Now, did this -- just yes or no -- become

21 the subject of huge contention between you and Mr. Montgomery,

22 of Mr. Montgomery saying that you weren't paying -- the company

23 wasn't paying him what he deserved to be paid?

24 A. Absolutely not.

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1 Q. Okay. And did money become the subject of contention

2 between the two of you throughout 2004 and 2005?

3 A. Yes, it was a big issue for Dennis because he was

4 desperate for money.

5 Q. So it was an issue of contention between the two of

6 you?

7 A. It was no contention for me. He just kept asking me

8 for money.

9 Q. Okay. Now, in the context of him asking you for

10 money, was there a discussion during these government contracts

11 about his ownership of the technology relating to the

12 government contracts and your acknowledgement that he owned it?

13 A. I'm not sure I understand what you're saying.

14 eTrepid owned all of the technology. Dennis owned none of the

15 technology.

16 Q. Was there a discussion between you and Mr. Montgomery,

17 when this issue became very heated about him being owed money,

18 about who owned the technology that was underlying these

19 government contracts?

20 MR. PEEK: Objection. Compound. There's two

21 questions, about him being owed money or --

22 THE COURT: Agreed, agreed. Break the question down.

23 BY MR. FLYNN:

24 Q. In the context of any discussion between you and

Page 85

1 Mr. Montgomery, were you fighting over money?

2 A. No.

3 Q. Was there a discussion about who owned the technology

4 that was fueling the government contracts?

5 A. Absolutely not.

6 Q. Never?

7 A. Never.

8 Q. Now, did Mr. Montgomery -- between 2004 and throughout

9 2005, was he making demands on you, eTrepid or whatever, for

10 money in connection with monies paid by the government?

11 A. Absolutely not. He asked me for money because he

12 needed to borrow more money than he had borrowed in the past.

13 Q. I understand your testimony. Coming down to the end

14 of 2005, were you negotiating with the government on any

15 potential contracts that are classified?

16 A. No.

17 Q. Were you having discussions between September '05 and

18 December '05 -- the end of December '05, about government

19 contracts, sales to the government of technology Mr. Montgomery

20 claimed that he owned?

21 MR. JAKOPIN: Objection. Foundation.

22 THE COURT: I think -- no, that's a question. Were

23 you having discussions. I'm going to allow that.

24 THE WITNESS: eTrepid was having discussions with the

22 (Pages 82 to 85)

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1 government about four potential contracts that the government  
2 was interested in pursuing.

3 BY MR. FLYNN:

4 Q. Okay. And I don't mean to be contradictory, but  
5 didn't you just say a minute ago that eTrepid was not having  
6 discussions with -- with the government about government  
7 contracts in the fall of 2005? Didn't you just say that in the  
8 question before that?

9 THE COURT: I think that's argumentative.

10 MR. FLYNN: It is, Your Honor. It is admittedly  
11 argumentative.

12 BY MR. FLYNN:

13 Q. Mr. Trepp, in the fall of 2005, you now acknowledge  
14 there were discussions between eTrepid and the government  
15 about four contracts that were basically related to technology  
16 Mr. Montgomery was involved in; is that correct?

17 A. That eTrepid was involved in, yes.

18 Q. Okay. Mr. Montgomery was the chief technical officer,  
19 he was the then-30 percent partner, and he was the one  
20 exclusively in charge of the highest security clearance at that  
21 time?

22 MR. PEEK: Is there a question there, Your Honor, or  
23 just a whole series of predicates?

24 THE COURT: I would like a question, if you could,

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1 please.

2 BY MR. FLYNN:

3 Q. Okay. Mr. Trepp, did -- in the fall of 2005, did you  
4 have the source codes that would have enabled you or  
5 Mr. Montgomery to make a deal with the government?

6 A. Yes.

7 Q. You had them personally?

8 A. No.

9 Q. Who had them?

10 A. The company.

11 Q. Where were they?

12 A. I don't know exactly. I could tell you where I  
13 believe they were.

14 Q. Were they on any of the CDs or DVDs or whatever you  
15 had in your safes?

16 A. Of course not.

17 Q. Did you have discussion with Mr. Montgomery about that  
18 technology that was needed for those government contracts and  
19 how much he wanted -- Mr. Montgomery wanted?

20 A. Mr. Montgomery wanted for what?

21 Q. How much money he wanted, if you or whoever was going  
22 to get 100 million, 50 million, a licensing deal, whatever, how  
23 those revenues would be split, did you have those conversations  
24 with Mr. Montgomery?

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1 A. Absolutely not.

2 Q. Now, before we get to whatever it was that broke you  
3 two folks apart -- I take it from your testimony, it wasn't  
4 money?

5 A. It was -- it was greed.

6 Q. Or it was money? Greed, money? It was money?

7 Did those -- did that greed arise during the fall of  
8 2005?

9 A. I think what I've learned in the last three weeks,  
10 Dennis has had greed since the day I met him beyond belief.

11 Q. I'm talking about your discussions with him in the  
12 fall of 2005. Did that, what you're characterizing as greed,  
13 take place during the fall of 2005?

14 A. I've said it before. We never had a discussion about  
15 money relating to the government contracts and what he was  
16 going to get. He got a salary. He had a 30 percent interest  
17 in the business. And that was our deal. It didn't change.

18 Q. Yet, on December 28th, you had him sign a -- just  
19 before you split up, an agreement and modification of a  
20 promissory note and security agreement for -- how much money?

21 A. It was a million three in principal that he owed me  
22 and about a million five in interest on loans that started from  
23 1999.

24 Q. And just before you broke up, coming to the end of

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1 2005, you had him sign this document; is that correct?

2 A. Yes, because he borrowed -- he borrowed an additional  
3 150,000 on December 10th, and I said, "You gonna sign a new  
4 note for the monies you just borrowed?"

5 On December 8th, he had sent me an e-mail asking me  
6 for \$275,000. He said, "I know I borrowed a lot of money from  
7 you in the past. It's very, very important."

8 Q. Now, sir, how much money, as of December 28th, 2005,  
9 before you went on your cruise, had you taken out of eTrepid?

10 A. In what form?

11 Q. Any form.

12 A. I was paid a salary in 2003, '4 and '5 of \$400,000  
13 each year. And the reason why I took any salary -- let me step  
14 back.

15 In the years '99, 2000, 2001, 2002, I took zero salary  
16 because the company wasn't making money and I wanted not to  
17 have to go back and make more capital calls and dilute  
18 shareholders.

19 In 2003, '4 and '5, I was specifically asked by Patty  
20 Gray to come up with a number that would be necessary so we  
21 could get our G&A number up on government contracts. You have  
22 a cost-plus contract, meaning it's the cost and then you're  
23 allowed to charge up to a certain percentage for G&A expenses.  
24 By me not taking a salary, our company could not get the

23 (Pages 86 to 89)

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1 benefit of the value of up to 12 percent, which was a fair  
2 market value. Without my salary, it was 8-point-something.  
3 And it was suggested by the attorneys and by myself  
4 that we should all get together, give me this money so we could  
5 at least get the G&A out of it. The net effect of that G&A  
6 payment of a grossed-up value was that, yes, I was getting a  
7 \$400,000 salary, but there was more money going to the company  
8 because of that.

9 Q. During this period the company didn't have any money,  
10 how much were you charging off of the company on the Gulfstream  
11 jet?

12 A. On the Gulfstream jet?

13 Q. How much in your favor on the Gulfstream was being  
14 expensed against eTreppid and your partner, Mr. Montgomery?

15 A. There was no money charged for the use of the  
16 Gulfstream jet other than when I used it to go on business  
17 trips either with Mr. Montgomery or other employees.

18 Q. In one year alone, was it approximately one million?

19 A. That sounds extraordinarily high. We might have  
20 signed a contractual agreement with a company for hundreds of  
21 thousands of dollars for the use of the jet over a period of  
22 time. There -- it's inconceivable to me that we paid a million  
23 dollars in one year for the use of it.

24 Q. In 1999, was it 560,000?

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1 A. I have no idea. I could certainly look it up and give  
2 you an answer to that.

3 Q. In 2000, was it one million?

4 A. It's inconceivable.

5 Q. Now, back to the fall of 2005, I understand from your  
6 testimony that it was Mr. Montgomery's greed for money,  
7 demanding money from you, that was the subject of discussion;  
8 is that correct?

9 A. That is not what I said.

10 Q. I believe you said it wasn't a discussion in the  
11 context of the government contracts, but it was a subject of  
12 discussion; is that correct?

13 A. No, it is not correct.

14 Q. How did Mr. Montgomery's greed manifest itself to you  
15 in the fall of 2005?

16 A. I believe I found out the level of greed in the last  
17 three weeks, not in the fall of 2005.

18 Q. Again, for time purposes, we're going to cut this  
19 short for now. Let's go to the end of 2005. How much was in  
20 the company bank accounts from government contracts?

21 A. How much was in the bank accounts? Around \$5 million.

22 Q. Isn't closer to 9 million?

23 A. Absolutely impossible.

24 Q. Where is the 5 million today?

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1 A. In the bank account.

2 Q. How much did you take out in the last 60 days,  
3 Mr. Trepp?

4 A. Where?

5 Q. Out of eTreppid.

6 A. Nothing.

7 Q. In the last 90 days?

8 A. Nothing.

9 Q. The last 120 days?

10 A. I mean, other than a salary, like everybody else.

11 Q. How much have you taken out?

12 A. Did I get --

13 THE COURT: Other than a salary?

14 MR. FLYNN: Other than a salary.

15 THE WITNESS: Zero.

16 BY MR. FLYNN:

17 Q. Did you have a discussion with Mr. Montgomery about  
18 this issue?

19 MR. PEEK: Objection. Which issue?

20 BY MR. FLYNN:

21 Q. The issue of how much was in the eTreppid bank  
22 accounts from government contracts and where it was going to  
23 go, who was going to get it.

24 A. Who was going to get what?

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1 Q. The money in the bank accounts.

2 A. Nobody was going to get it.

3 Q. Who made that decision?

4 A. Me.

5 Q. Because then you were 50 percent owner with your  
6 friends and Mr. Montgomery was only 30 percent?

7 A. I don't know. Is that a question?

8 Q. Yeah.

9 A. But what was the question?

10 Q. Is that why you had the right to make the decision as  
11 to what was going to be done with that money?

12 A. There is a management committee we have. The  
13 management committee has the right to determine what to do with  
14 the money in the company. I felt it was prudent to leave at  
15 least two years' worth of operating expenses in the bank  
16 account, not use it for other than that.

17 So, on a going-forward basis -- we only have \$700,000  
18 worth of contracts for the year 2006 in the company. I didn't  
19 want to be put into a position of making capital calls to  
20 create more dilution for the shareholders, and I certainly  
21 didn't want to start loaning millions of dollars back into the  
22 company.

23 Q. Mr. Trepp, did you discuss with Mr. Montgomery what  
24 was going to happen to what you say is the 5 million?

24 (Pages 90 to 93)

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1 A. Yeah, I told him we were going to leave it in the  
2 business until we have enough money where we can make a  
3 distribution when it's substantial enough where we don't have  
4 to worry about operating expenses going forward.

5 Q. And when did you have that discussion?

6 A. November, December.

7 Q. What did Mr. Montgomery say to you?

8 A. I don't remember him even commenting.

9 Q. Did he say something like, "I've been working 18-hour  
10 days for seven days a week for years with technology that I  
11 own, and I want my share of that money"?

12 A. Absolutely not.

13 Q. And so then the fight you got into that led to him  
14 being -- was he fired?

15 A. I didn't get into a fight with him. I have never  
16 gotten into a fight with Mr. Montgomery.

17 Q. Was he fired?

18 A. Yes, he was fired.

19 Q. Who fired him?

20 A. I did.

21 Q. Now, when did you become concerned that  
22 Mr. Montgomery, by some trick or artifice or thievery, was  
23 going to steal eTreppid technology?

24 A. He had already stolen it by the time I found out about

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1 it.

2 Q. So when was that, Mr. Trepp?

3 A. January 10th or 11th.

4 Q. So you had no fear before then that he was going to  
5 steal eTreppid technology before January 10th; is that correct?

6 A. That's correct.

7 Q. And you had no discussion with him prior to  
8 January 10th which you would characterize as a conflict in  
9 which he said, "I own the technology, I want my money, give it  
10 to me"; is that your testimony?

11 A. Yeah. If that's what he said, it's a blatant lie.

12 Q. And yet, all of a sudden, after all these years,  
13 Mr. Montgomery is stealing the technology; is that your  
14 testimony?

15 A. Yes.

16 Q. And his motive for doing it is what, sir?

17 A. Um, he's desperate for money. He, on a number of  
18 different transactions that I've recently found out, defrauded  
19 a number of different people on work that he had done in  
20 conjunction with the company.

21 Q. So he --

22 A. He was covering up.

23 Q. So by doing it, he got himself fired, ended his --  
24 whatever money he was getting from you and eTreppid and risked

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1 getting whatever for allegedly stealing the technology, is that  
2 your testimony, because he needed money?

3 A. Yes.

4 Q. Now, when did you first find out that he needed money?

5 A. Well, he's needed money for all the years he's been  
6 borrowing it from me.

7 Q. When you had him sign the document, Exhibit 18 --

8 A. Yep.

9 Q. -- on December 28th, did he ask you for money?

10 A. No. It was on December 8th he sent me an e-mail that  
11 said he wanted to borrow \$275,000. On December 10th, I gave  
12 him \$150,000. I then said to him, "I want you to sign an  
13 amended note like the prior two notes that you amended."

14 Q. Now, this 150,000 that you gave him --

15 A. Yeah.

16 Q. -- did you say you wanted stock in return?

17 A. I wanted what?

18 Q. Stock in return.

19 A. The note that I had from the beginning of time always  
20 had -- there's a legal word for it, but a secured interest in  
21 his shares.

22 Q. Weren't you parceling out money to Mr. Montgomery to  
23 keep him happy because he was demanding his share of the  
24 profits from eTreppid from the government contracts?

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1 A. Absolutely not.

2 Q. Mr. Trepp, did you have any control over  
3 Mr. Montgomery in his doing his work in his workstation in  
4 connection with these contracts?

5 A. I'm not sure I understand what that question means.

6 Q. Well, did you direct him in any way, did you supervise  
7 him in any way, as to how to do the work?

8 A. Supervise him, no.

9 Q. Did anyone supervise or control or direct him in terms  
10 of how to do the work?

11 A. No. He was the RCTO. It was his responsibility to do  
12 the best job, you know. He had a fiduciary responsibility.  
13 Everybody worked for him. He hired, he fired, he delegated  
14 people to do work. It was not my job.

15 Q. The source codes that you're in court for that you're  
16 trying to get --

17 A. Yes.

18 Q. -- is it your testimony that only Mr. Montgomery has  
19 those source codes?

20 A. With the exception of what we've been able to  
21 re-create out of what's been deleted. Otherwise, I believe  
22 Mr. Montgomery has those source codes.

23 Q. And he's the only one, is that correct, that you know  
24 of?

25 (Pages 94 to 97)